

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT FRANCIS,)
)
Petitioner,)
)
vs.) Case No. 4:08CV1048 CDP
)
UNITED STATES OF AMERICA,)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on petitioner's motion to withdraw notice of appeal and for an extension of time to file his notice of appeal. On November 1, 2010, I liberally construed petitioner's motion for certificate of appealability as a motion to reopen the time for appeal and denied the motion. Now, petitioner essentially asks that I reconsider that Order, pointing out he mailed his certificate of appealability, in which he requests an extension of time to appeal, on October 19, 2010, within 30 days after his time to appeal had expired.¹ Therefore, petitioner requests that I grant him an extension of time under Rule 4(a)(5), which provides as follows:

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

¹The Judgment was entered on July 28, 2010.

- (i) a party moves no later than 30 days after the time prescribed by this Rule (a) expires; and
 - (ii) . . . that party shows excusable neglect or good cause.
- . . .

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

In support of his request, petitioner contends that he was on lockdown status and unable to timely file his appeal. Because petitioner has demonstrated good cause, I will reconsider my prior Order, construe his motion for certificate of appealability as a motion for an extension of time to file his appeal, and grant the motion. Therefore, his notice of appeal mailed on October 19, 2010 is timely filed.

Accordingly,

IT IS HEREBY ORDERED that, upon reconsideration, petitioner's motion for an extension of time to file an appeal [#13] is granted in part, and petitioner is granted an additional fourteen days to file his notice of appeal. In all other respects, however, the Court's Memorandum and Order dated November 1, 2010, remains in full force and effect.

IT IS FURTHER ORDERED that petitioner's motion to withdraw notice of appeal [#19] and motion for extension of time [#20] are denied as moot.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 24th day of November, 2010.